



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/934,121

08/21/2001

William J. Byrne

2222.0320000

7730

28393

7590

06/19/2007

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

1100 NEW YORK AVE., N.W.

WASHINGTON, DC 20005

EXAMINER

ELAHEE, MD S

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

06/19/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

09/934,121

Applicant(s)

BYRNE ET AL.

Examiner

Md S. Elahee

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 10-18 and 56-82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-18 and 56-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This action is responsive to an amendment filed on 04/02/2007. Claims 10-18 and 56-82 are pending. Claims 1-9 and 19-55 have been previously cancelled. Claims 56-82 have been newly added.

### ***Response to Arguments***

2. Applicant's arguments filed on 04/02/2007 Remarks regarding claims rejection in view of Uppaluru have been fully considered but are moot in view of the new ground(s) of rejection which is deemed appropriate to address all of the needs at this time.

3. Applicant's arguments filed on 04/02/2007 Remarks regarding claims rejection in view of Surace have been fully considered but they are not persuasive because of the following:

Regarding claim 10, the applicant argues on page 9 that the added limitation "wherein the specified character traits are used to select a consistent personality for the virtual host" of claim 10 has overcome the rejection of claim 10 in view of Surace. Examiner respectfully disagrees with this argument. Surace teaches this limitation (see fig.3; page 3, paragraphs 0041-0046, 0048-0050).

Thus, the rejection of the claim in view of Surace will remain. Since claims 11-18 are dependent claims on claim 10, these claims are also rejected for the same reasons as discussed above with respect to claim 10.

*Claim Rejections - 35 USC § 101*

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 74 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

Claim 74, claims the non-statutory subject matter of a computer program logic. Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1754 (claim to a data structure per se held nonstatutory). Therefore, since the claimed program does not comprise instructions to cause a processor to perform the method of the steps then the Applicants has not complied with 35 U.S.C 101.

*Claim Objections*

6. Claims 75-80 are objected to because of the following informalities: regarding claim 75, the phrase "The computer program logic of claim 56" in line 1 appears to be "The computer program logic of claim 74". Claim 76-80 is objected for the same reasons as discussed above with respect to claim 75. Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 10, 56, 65 and 74 are rejected under 35 U.S.C. 102(e) as being anticipated by Surace et al. (U.S. 2005/0091056).

Regarding claims 10 and 56, with respect to Figures 1-3, Surace teaches a method of providing a voice user interface for a user comprising:

enabling the user to specify personality information [i.e., character traits] desired in a virtual assistant [i.e., virtual host] wherein the specified character traits are used to select a consistent personality for the virtual host (fig.3; page 3, paragraphs 0041-0046, 0048-0050, page 8, paragraph 0102, page 9, paragraphs 0112, 0113);

Surace further teaches storing the specified personality information in a user profile having preference information for an actor [i.e., user] (page 8, paragraph 0103, page 9, paragraphs 0112, 0113, page 12, paragraphs 0145-0147, 0149); and

Surace further teaches generating the virtual assistant with the consistent personality in accordance with the specified personality information (fig.1, 3; page 2, paragraph 0029, page 3, paragraph 0049, page 7, paragraph 0092, page 8, paragraph 0102).

Claim 65 is rejected for the same reasons as discussed above with respect to claim 10. Furthermore, Surace teaches a memory (fig.1, item 101, fig.2, item 201); and

a processor (fig.1, item 105, fig.2, item 211) operable to process logic (page 2, paragraph 0032).

Claim 74 is rejected for the same reasons as discussed above with respect to claim 10.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 2614

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 11, 57, 66 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Staples et al. (U.S. Patent No. 6,301,339).

Regarding claims 11, 57, 66 and 75, Surace, as applied to claims 10, 56, 65 and 74, fails to teach "information defining a tone of voice for the virtual host". Staples teaches information specifying [i.e., defining] the tones for the client software [i.e., virtual host] (col.41, lines 48-67, col.42, lines 1-10). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to allow information defining a tone of voice as taught by Staples. The motivation for the modification is to have the information defining a tone of voice in order to provide the specific characteristic.

Art Unit: 2614

13. Claims 12, 58, 67 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Sakurai et al. (U.S. Patent No. 5,189,702).

Regarding claims 12, 58, 67 and 76, Surace, as applied to claims 10, 56, 65 and 74, fails to teach "information defining a speed of voice for the virtual host". Sakurai teaches information enabling [i.e., defining] a speed of voice for the host equipment [i.e., virtual host] (col.3, lines 33-49). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to allow information defining a speed of voice as taught by Sakurai. The motivation for the modification is to have the information defining a speed of voice in order to provide the specific characteristic.

14. Claims 13, 59, 68 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Eikeland (U.S. Patent No. 5,768,508).

Regarding claims 13, 59, 68 and 77, Surace, as applied to claims 10, 56, 65 and 74, fails to teach "information defining a background for the virtual host". Eikeland teaches information defining a background for the client [i.e., virtual host] (col.7, lines 58-67, col.8, lines 37-40). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to allow information defining a background as taught by Eikeland. The motivation for the modification is to have the information defining a background in order to provide the specific characteristic.



15. Claims 14, 60, 69 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Duffy et al. (U.S. Patent No. 5,911,043).

Regarding claims 14, 60, 69 and 78, Surace, as applied to claims 10, 56, 65 and 74, fails to teach "information defining a sex for the virtual host". Duffy teaches information defining a sex for the user [i.e., virtual host] (col.1, lines 63-67, col.2, lines 1-12). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to allow information defining a sex as taught by Duffy. The motivation for the modification is to have the information defining a sex in order to provide the specific characteristic.

16. Claims 15, 61, 70 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Bijl et al. (U.S. Patent No. 6,366,882).

Regarding claims 15, 61, 70 and 79, Surace, as applied to claims 10, 56, 65 and 74, fails to teach "information defining an accent for the virtual host". Bijl teaches information defining an accent for the user [i.e., virtual host] (col.14, lines 6-13). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to allow information defining an accent as taught by Bijl. The motivation for the modification is to have the information defining an accent in order to provide the specific characteristic.

17. Claims 16-18, 62-64, 71-73 and 80-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surace et al. in view of Wigan et al. (U.S. Patent No. 4,531,184).

Art Unit: 2614

Regarding claims 16, 62, 71 and 80, Surace, as applied to claims 10, 56, 65 and 74, fails to teach “information defining a formality level of a conversational style for the virtual host”. Wigan teaches information defining a formality level of a conversational facility [i.e., style] for the subscriber [i.e., virtual host] (col.31, lines 32-67, col.32, lines 1-67, col.33, lines 1-67, col.34, lines 1-3). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Surace to allow information defining a formality level of a conversational style as taught by Wigan. The motivation for the modification is to have the information defining a conversational style in order to provide the specific characteristic.

Regarding claims 17, 63, 72 and 81, Surace, as applied to claims 16, 62, 71 and 80, teaches updating [i.e., adjusting] the prompt [i.e., conversational-type] based on the user interaction history information (page 8, paragraphs 0102, 0103).

Regarding claims 18, 64, 73 and 82, Surace, as applied to claims 17, 63, 72 and 81, teaches changing the formality level according to a level of user experience with the voice user interface (abstract; page 1, paragraph 0007, page 8, paragraphs 0102, 0103).

### ***Conclusion***

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Md S. Elahee whose telephone number is (571) 272-7536. The examiner can normally be reached on Mon to Fri from 8:30am to 5:00pm.

Art Unit: 2614

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*MD Shafiul Alam Elahue*

MD SHAFIUL ALAM ELAHEE

Examiner

Art Unit 2614

June 10, 2007